

Special Accounts Senior Management Committee Meeting
Meeting Notes and Action Items
July 8, 2010 1-4pm
EPA West Room 4128

Attendees in Person:

Jim Woolford, OSRTI/IO
David Bloom, OCFO/OB
Elliott Gilberg, OECA/OSRE
Susan Dax, OCFO/OFM
Raffael Stein, OCFO/OFS
Tracey Stewart, OSRTI/IO
Khanh Nguyen, OCFO/OB
Laura Ripley, OCFO/OB
Hollis Luzecky, OECA/OSRE
Filomena Chau, OECA/OSRE
Meshell Jones Peeler, OCFO/OFM
Kevin Brittingham, OCFO/OFM
Meridith Sebring, OSWER/ARMS
Joel Woodson, Booz Allen Hamilton (contractor support)

Attendees via phone:

Greg Luebbering, Cincinnati Finance Center
Peter Hendrickson, Cincinnati Finance Center
Leslie Peterson, Region 2
Jennifer Chernowski, Region 2
Chloe Metz, Region 2
John Frisco, Region 2
Patty Bettencourt, Region 4
Debbie Bishop, Region 7
Teri Hankins, Region 7
Cecilia Tapia, Region 7
Bob Jackson, Region 7
Judy Wong, Region 8
Martha Walker, Region 8
Deb Janik, Region 8
Ryan Kane, Booz Allen Hamilton (contractor support)
Anthony Smaldon, Booz Allen Hamilton (contractor support)

Introduction

Jim Woolford opened up and introductions were made for people in the room and on the phone. Jim thanked everyone for their hard work and efforts in putting together all of the data that was being used for this presentation. He walked through the agenda and goals for the meeting that are listed in the Power Point presentation titled "Special Accounts Senior Management Committee". Jim touched on the summary of the December 2009 meeting and the outcome/decisions made in that meeting.

Financial Status of Special Accounts (SAs)

David Bloom discussed the financial status of SAs. David noted that this year's interest earned is well below years past because of low interest rates and that 2010 is a banner year for collections, due mostly to the ASARCO settlement. He also noted that there are approximately \$214 million in unliquidated obligations from special accounts.

Budget Update/Use of Management Dollars

David Bloom discussed with the Committee the allocation of \$132,000 for special account management activities in FY 2010 and proposed activities in FY 2011 that may require funding. OSRE was approved to receive an additional [REDACTED] for work associated with posting Frequently Asked Questions on the intranet. Estimated costs for special account management activities should be submitted to Laura Ripley, with a cc to Tracey Stewart, by September 1, 2010. Any critical funding needs for FY 2011 should also be identified. The Office of Budget (OB) will follow-up on any additional funding requirements that may also be needed for special account management in the new financial system.

National SA Meeting

Tracey Stewart re-capped the National SA meeting that took place in May 2010 in Chicago. Areas discussed at the national meeting included what was reported to Congress in the FY 2011 Congressional Justification for special accounts, the planning and use guidance under development, and areas the Committee has focused on for special account management. She noted that Regions 5 and 8 shared their processes for planning and managing SAs because the processes tend to vary and this really helped HQ and Regional counterparts get a better understanding of the differing processes used to manage special accounts. She also noted that Region 6 facilitated a discussion on how to identify expenditures for reclassification, using Tex-Tin as an example from Region 6.

Office of General Counsel (OGC) State Assurance Update

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[REDACTED] OGC, OSRE and OSRTI met on June 2nd to discuss the issue. It was decided to maintain the current policy and practice, which is that when special account funds are used by EPA to conduct RAs, the states are not required to contribute a 10% cost share as they would if appropriated Trust Fund dollars are utilized.

SA Documentation under Development

Tracey Stewart walked through the documents under development OSRTI is responsible for. She noted that the "Planning and Use of SAs Guidance" was drafted in response to an Office of Inspector General (OIG) recommendation and she confirmed finalization of the document by September 30, 2010. She noted that a previous area identified for further development, placement of funds into a SA, is being reconsidered after discussions with the Planning and Use workgroup. This item may be sufficiently addressed in the 2002 Consolidated Guidance, but an update will be provided to the Committee at the next meeting. Tracey also noted that regarding procedures for reclassifying Superfund expenditures, HQ is working to expand this document to address existing challenges related to special account reclassifications. In addition, the Special

Accounts Management Strategy must be updated every two years and it will be addressed at the next meeting.

Elliott Gilberg noted that the “Frequently Asked Questions” have been placed on OSRE’s intranet site and need to be converted into files that can be searchable on the web and easily updated. Hollis Luzecky noted that the SA sample memos are currently being reviewed. Updated sample memos should be issued by the end of July but will definitely be issued by the end of August 2010.

Laura Ripley noted that the special account reclassification portion of the “FY 2011 Deobligation Recertification Guidance” will be updated based on the decision from the Committee during this meeting.

Susan Dax noted that the “Financial Management of Special Accounts (RMDS 2550D Ch. 15)”, came to a standstill. **Exemption 5 - Attorney-Client Privilege**, development of the document will continue and the workgroup will reconvene. The goal is to complete this document by the end of the calendar year.

Reclassifications and Transfers to the Trust Fund

Tracey Stewart walked through the current status of reclassifications and transfers to the Trust Fund and noted that we are ahead of where we were last year at this time in terms of plans and actual amounts. It was also noted that approximately 35 draft and/or final reclassification notification memos have been received (as of 6/28/2010) and that an updated status of reclassifications and transfers to the Trust Fund will be distributed to Superfund Division Directors in July. Additionally, she noted that workload issues related to responding to the BP oil spill may cause some reclassifications to be pushed out until FY 2011.

Tracey discussed OSRTI’s commitment as part of its FY 2010 FMFIA assurance letter to conduct a review of special account reclassifications, transfers to the Trust Fund, and account closeouts, and noted that particularly for SA closeouts, Regions have asked for the process to be streamlined. David Bloom asked what was meant by “streamlining” and Tracey noted that it meant alleviating workload as much as possible. OSRTI committed in its FMFIA assurance letter to complete the review by December 31, 2010. Judy Wong asked that the FMFIA schedule and plans be shared with the Regions.

David Bloom noted that the Deobligation Recertification Guidance establishes the “rules of the road” for the recertification of deobligated funds, as provided for in the current policy. Laura Ripley elaborated on how the policy relates to the reclassification of SA funds. Jim Woolford noted that the challenge of the reclassification process lies in the amount of work required and that numerous lines of accounting can significantly increase the work required to compile the memo and prepare the KV transaction.

Jim Woolford noted that the FY 2009 policy is currently being used for FY 2010 because it had only been out for a year at time of issuance for FY 2010. David Bloom noted that there is a need to manage resources appropriately for this process because dollars and effort need to be aligned

with the highest priorities from a national perspective. Three different options regarding the distribution of deobligated funds during the reclassification process are being evaluated. Jim added that given the workload associated with reclassifications, and special account management in general, he wondered if there may be a way to provide unutilized FTE to the Regions to alleviate some of the work associated with the reclassification process. David also added that OB is looking at the feasibility of making additional FTE available by changing the way reimbursable FTE are calculated against the Agency's FTE ceiling. Jim noted that the options presented for percentages of recertified funds distributed to the National Pool and the Regions are a result of increasing pressure to relieve national budget shortfalls in both construction and pipeline activities. Leslie Peterson noted that Region 2 is relying on the reclassification process this year the same as in past years to provide needed pipeline funds in the region. Debbie Bishop noted that regional programs had concerns about changing the current reclassification policy because of the workload involved to conduct a reclassification. Judy Wong echoed this and also added that Region 8 would like to see the reclassification process simplified due to the large number of accounting lines involved with performing the reclassification and drafting the memo.

Elliott Gilberg asked if it was accurate that 100% of money goes back to the Region for programs other than Superfund Remedial and Removal. Laura Ripley responded that yes, it does, if it originated in that program, and clarified that if it was a HQ expense it goes back to HQ, but Regional expenses go back to the Regions.

Jim Woolford also noted that there may be more options than what are listed here but that he and David would have a follow-up discussion, including the lead Regions, on making a decision for which option to go with.

Status of OIG Audits and Recommendations

Tracey Stewart walked through the status of recommendations made in the OIG March 2009 report for management of SAs. In regards to recommendation 1(e) from that report, Tracey noted some of the overarching principles outlined in the Planning and Use of Superfund Special Accounts guidance, including utilization of SA funds before appropriated dollars and managing SAs while considering site uncertainties.

Tracey Stewart noted that within the workgroup that is developing the guidance, there has been a lot of discussion around the first use in the SA General Hierarchy of Use regarding disbursements to Potentially Responsible Parties (PRPs) pursuant to work agreements and how this is not widely used but still needs to be considered. As part of the site uncertainties that may be addressed, Tracey added that these include the following:

- Pre-remedy: a decision has not yet been made on the final remedy for the site.
- Pre-settlement: EPA is still in negotiations with a work party PRP but is not sure if EPA or the PRP will do the work.
- EPA work takeover: fear of a PRP walking away, leaving EPA to do the work at a site.
- Protectiveness contingencies: potential that a remedy may not perform as expected in the future.

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Laura also added

that they are investigating whether or not special accounts can be used for indirect costs similar to indirect costs applied to interagency agreements. Jim Woolford added that additional work/thought would need to go into this issue.

Elliot Gilberg posed a question regarding the SA General Hierarchy of Use and whether or not HQ would have to explain any variance from using this hierarchy. Tracey Stewart responded that HQ will monitor implementation and use of the Hierarchy through the CERCLIS planning screens.

Kevin Brittingham discussed the March 31, 2010 OIG final report issued on Federal SAs. This report was a result of an OIG audit of Federal SAs done between January 2009 and March 2010. It was noted that one of the recommendations made was for OCFO to request OSWER to perform baseline and annual reviews of Federal SAs. Kevin reviewed the corrective actions that were provided to the OIG to address their recommendations. They have proposed to complete the review of Federal SAs by December 2010 but may not know the exact completion date until the review is started. Susan Dax noted here that with non-federal accounts, negative balances may be an issue due to incorrect alignment of fund codes.

Planned Uses for SA Resources

Tracey Stewart and Filomena Chau walked through the planned uses for SAs as of mid-years. It was noted that for FY 2010, the large increase in available balance amounts is largely attributable to the ASARCO settlement, and as a result, this changed planning numbers quite a bit. However, in terms of planning the use of funds in CERCLIS, the plans are much better than they were a year ago.

Filomena Chau reviewed the regional profile of SAs, and added under the Use Limitations section that the 86 accounts with limitations of use on funds represents less than 10% of all accounts. **Exemption 5 - Deliberative Process**

Filomena Chau noted that the percentage of available balance planned under Other Plans is down to 6% from 27% about a year and a half ago, showing significant improvement in planning under other available categories. Jim Woolford provided a reminder here that SAs should be used or planned to be used before appropriated dollars. Susan Dax also added here that they are about to undertake a Six Sigma process improvement course for evaluating Superfund State Contracts, and offered up the idea that this may be useful to apply to the reclassification process as well to help better understand and potentially make the process easier to implement.

Tracey Stewart reviewed special account composition by the focus areas of accounts with more than \$10 million available, accounts at CC and Deleted sites, accounts with \$0 disbursed, and accounts 10 years old or more and plans for utilization for accounts in these areas as well as account by site status. Jim Woolford asked a question regarding Construction Complete (CC) sites and why the amount is so high for potential uses listed in settlements. Tracey responded that this field is for activities or limitations specified in the settlement, and provided as an example where the settlement requires \$3 million in principle to remain in the account through the completion of Operations and Maintenance (O&M).

Tracey Stewart noted that over time there has been an increase in the utilization of SAs, which is positive to see in the results. She also reviewed the national available balance if planned CERCLIS obligations are taken into consideration over time, and added that the amount available for each fiscal year would actually be less than what is depicted because of uses accounted for elsewhere in the CERCLIS planning screen that cannot be annualized.

Tracey Stewart reviewed with the Committee the areas discussed during mid-year conference calls with the regions, and noted that HQ is looking into using SA funds for analytical services provided by the Contract Laboratory Program (CLP). David Bloom asked when HQ would use SA funds for the CLP program and Tracey replied that they would most likely have completed a reimbursement process for at least one site by the end of the fiscal year.

Tracey Stewart noted that several issues were raised during mid-year conference calls with the Regions. One issue concerns charging payroll to SAs and how doing so could impact FTE ceilings. Regions also had concerns with the workload associated with closing SAs. Ideas that came out of these discussions included determining a threshold for smaller accounts and doing a sweep to close some of them out. Tracey added that as a result of the continuing education for Remedial Project Managers (RPMs) and On-Scene Coordinators (OSCs) on SAs that there is now a better understanding on the planning and use of SAs. She also added that updating the plans in CERCLIS is very time-consuming because most Regions have 70-100 accounts, while the largest Region (Region 5) has over 200. Tracey reviewed recent changes to the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) Special Accounts Management screen and mentioned upcoming changes that will be made to align the screen with the new guidance.

Establishing SAs for Resource Conservation and Recovery Act (RCRA) Sites

Elliott Gilberg walked through the supplemental document titled "Special Accounts – Receiving and Using Funds" and summarized the history, intentions, and findings thus far around establishing SAs at RCRA sites. **Exemption 5 - Deliberative Process**

[REDACTED]

After walking through the summary of findings, he asked the group whether or not there are additional issues to consider other than what is listed in the summary and Jim Woolford responded that yes, there are, and those will probably need further work.

Regions 2, 4, and 7 had no comments as of yet. David Bloom asked what currently happens with bankruptcy settlements at RCRA sites and it was noted that the funds usually go to the Department of Treasury or a trust mechanism may be used. **Exemption 5 - Deliberative Process**

[REDACTED]

Exemption 5 - Attorney-Client Privilege

Jim Woolford noted that an action item for Elliott Gilberg is to schedule a call for the Regional Division Directors (DDs) to discuss this issue further. Elliott added that some more time may be needed for the issue to be further detailed before it's discussed on the DD call but that he would lay out plans for the next steps. Elliott also added that questions on the RCRA issue from HQ or the Regions should be addressed to him or Hollis Luzecky.

Evaluation of Committee Operations

Jim Woolford and Tracey Stewart reviewed the SA Senior Management Committee operations and solicited feedback on the current setup and asked for input for any improvements to the meetings. Cecilia Tapia responded that not all Regions may be as detail-oriented when it comes to data, so the data shown in the presentations could potentially be shortened a bit to just show items such as data issues. Jim added that the next meeting will take place in December 2010.

Tracey Stewart walked through the upcoming SA activities listed in the presentation and then a short summary of action items from the meeting was reviewed.

Action Items

| Item | Staff Member | Due Date |
|---|---|------------------------|
| Provide additional questions/thoughts on the RCRA SA issue to Elliott and Hollis. | All | July 26, 2010 |
| Hold a follow-up discussion on the deobligation recertification policy for special account reclassifications. | Jim Woolford David Bloom Lead Regions | August 18, 2010 |
| Provide cost information for FY 2011 special account management activities to Laura Ripley and cc Tracey Stewart. | All | September 1, 2010 |
| Share decision on how reimbursable FTE will be considered against FTE ceiling. | David Bloom Laura Ripley | September 30, 2010 |
| Share the plans and schedule for OSRTI's reclassification/TF transfer/closeout review with the Regions. | Tracey Stewart | None assigned |
| Provide an update to the Committee on streamlining the reclassification process. | Tracey Stewart | Next Committee meeting |
| Update the Committee on the review of Federal SAs in response to the March 2010 OIG Final Report. | Kevin Brittingham | Next Committee meeting |